

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

77-1464

To be argued by
JOSEPH I. STONE

673

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B
P/S

77-1464 (77-1477)

UNITED STATES OF AMERICA,

Appellee,

-v-

CHARLES W. SIMPSON,

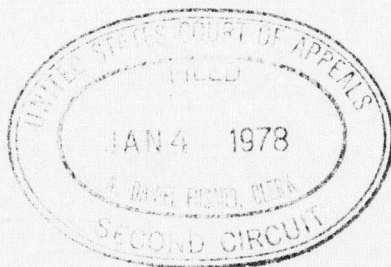
Defendant-Appellant.

1/4

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRIEF AND APPENDIX
FOR DEFENDANT-APPELLANT CHARLES W. SIMPSON

JOSEPH I. STONE
Attorney for Appellant
Office & P.O. Address
277 Broadway
New York, New York 10007



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PRELIMINARY STATEMENT

The defendant-appellant, Charles W. Simpson, appeals from a judgment of the United States District Court for the Southern District of New York, convicting him after trial, with a jury, before Hon. Edward Weinfeld, of the crimes of mail fraud, conspiracy and perjury, Title 18 U.S.C. Section 1341, Title 18 U.S.C. Section 371, Title 18 U.S.C. Section 1623.

The defendant was sentenced to one year imprisonment by Judge Weinfeld on November 18, 1977. The defendant-appellant was released in his own recognizance by Judge Weinfeld pending the submission of an expedited appeal. This appeal follows.

STATEMENT OF FACTS

Charles Simpson was an employee of co-defendant Joseph McIver. This employment was at McIver's Gun Hill Road auto wreckers commonly referred to as "Joey Do All" and "Joe McGoo" which was operated under the trade name of Newport Auto Wreckers. The F.B.I. began surveillance of this auto yard and intermittently used vantage points from Coop City surveilling from automobiles and helicopters.

On January 12, 1976 complaints and warrants were filed against Simpson and others charging them with conspiracy, 18 U.S.C.371, and transportation of stolen automobiles 18 U.S.C.2314.

On January 20, 1976 Simpson was arrested and gave an extensive statement to agents of the Federal Bureau of Investigation and an assistant United States attorney. In these statements he denied knowledge as to any stolen cars but he did not remember whether he specifically dismantled certain cars on certain dates. Simpson informed the U. S. attorney that he had a seventh grade education in North Carolina and could hardly read and write. Simpson was released on his own recognizance and continued his gainful employment. He was given an assigned attorney and on June 1, 1976 all proceedings against him were dismissed by the United States Government.

The following year Simpson was served a subpoena to appear before the Grand Jury. He appeared on June 13, 1977 and asserted his Fifth Amendment rights. On June 15, 1977 he appeared with his attorney (assigned by the magistrate), Mr. Alan Salzman. On June 15, 1977 Mr. Simpson was advised that he was not a target of the Grand Jury and was asked to testify truthfully.

Salzman had only been his attorney for a maximum of 48 hours, and according to Simpson's post trial affidavit had only talked to him for a short time. Salzman never sought any of Simpson's post arrest statements, nor did the government ever show these statements to Simpson or to Salzman prior to a subsequent Grand Jury indictment.

The crux of the Grand Jury proceedings centered on count 23 of the indictment where Simpson was specifically asked in the Grand Jury whether he remembered dismantling a "1972 white over green Cadillac", a "1975 brown Buick", a "1975 gold convertible Cadillac" and whether he drove a "black over yellow Toyota automobile".

In the Grand Jury Simpson's denials were unequivocal, however in his post arrest statements he simply did not remember these cars on these dates. It was argued before trial that the government was less than fair in not providing Simpson and/or his attorney with these post arrest statements. Simpson was not given a total right

of retraction after the Grand Jury indictment.

The trial began on October 3, 1977 with Simpson and McIver named in all counts of the indictment and Monaco, Lazzaro and Creaturo named in specific substantive counts. The entire government case was originally intended against their main target Joseph McIver by Mr. Eugene Neal Kaplan who presented a very thorough and well documented case.

Things were bad enough for Simpson at the beginning of the trial but took a drastic turn for the worse on the third day when McIver pleaded guilty leaving Simpson as the only defendant on trial in the conspiracy charge. The next five days had the government introducing over one hundred exhibits "subject to connection" and against Simpson only. The onslaught of evidence against one insignificant defendant can only be compared to the problem that the British faced when attacked by the entire German Air Force, but since I was no Churchill, Simpson sank.

Simpson took the stand, denied his guilt and was confronted with one witness (car owner) who claimed that he negotiated a deal directly with Simpson. Simpson claimed he never saw the man. F.B.I. surveillance, photographs and F.B.I. testimony placed Simpson at the yard as a worker on a continuous basis, usually wearing

a red hat. The jury rejected Simpson's version of the facts, found him guilty on all charges, and on November 18, 1977 he was sentenced to serve one year in prison. At the time of sentence the Court denied a motion to set aside the verdict based on Simpson's inadequate representation at the time he appeared before the Grand Jury. This constitutes Simpson's strongest appellate issue.

QUESTIONS PRESENTED

- 1) Simpson was inadequately represented when he appeared before the Grand Jury.
- 2) The government was not "fundamentally fair" with Simpson when he appeared before the Grand Jury.

ARGUMENT

POINT I

THE DEFENDANT IS ENTITLED TO ADEQUATE REPRESENTATION AT EACH AND EVERY STAGE OF THE PROCEEDINGS.

If a defendant receives inadequate representation so as to "shock the conscience of the Court and make the proceedings a farce and mockery of justice", then the judgment must be reversed. U.S. v. Wight 176 F.2 376, 379, U.S. v. Almestica 546 F.2 524, U.S. v. Hager 505 F.2 737. It is conceded that a wrong or poorly advised decision by a defense attorney is not alone enough to support a subsequent claim of ineffective counsel, Robinson v. U.S. 448 F.2 1255.

If an attorney were retained to represent a wealthy defendant before the Grand Jury he would certainly justify his fee by investigating the case. He would find out about the defendant's prior statements and endeavor to obtain copies of these statements. He would attempt to find out as much about the government's case as possible, and if there was any chance that the defendant may become a target of the investigation he would be derelict in his duty in not insisting that the defendant maintain his Fifth Amendment privilege.

There is no indication in this record that the government would have offered Simpson immunity, therefore any cautious, competent attorney would have known

everything about the case or advised Simpson to maintain his constitutional silence. To do less was the ineffective assistance of counsel and resulted in Simpson's ultimate conviction.

There is no possible strategic reason that Simpson's prior attorney could show to the court which would require a waiver as set forth in Henry vs. Mississippi, 379 U.S. 443.

Simpson was deprived of adequate representation during the course of the proceedings which was so important as to require a reversal of the judgment of conviction.

POINT II

THE ASSISTANT UNITED STATES ATTORNEY HAS A FUNDAMENTAL OBLIGATION TO INSURE THAT JUSTICE IS DONE TO ALL LITIGANTS, Brady v. Maryland 373,US.83; Berger v. United States 295, US 78.

There is also a question where all defendants must be treated with a certain amount of fundamental fairness as set forth in the Supreme Court of the United States in Twining v. New Jersey 211 US 78.

The government knew, when they called Simpson to the Grand Jury that he had a minimal seventh grade education. They also knew he had given consistent post arrest statements to the F.B.I. agents and to the United States Attorney's office. The prosecutor also

knew that the surveillance photos of the Newport Auto Wreckers clearly placed Simpson in the yard. The obligation of the assistant United States Attorney, dealing with a man of Simpson's limited intelligence required full disclosure to Simpson's appointed attorney. This was especially true when Simpson, after having asserted his Fifth Amendment rights on June 13th, was directed to the magistrate's office for assignment of counsel by the assistant United States Attorney and to reappear on June 15th.

The prosecutor on June 13th knew the entire government case and knew that a defense attorney having been newly appointed would have to spend a substantial period of time to become familiar with the case. The United States Attorney should have been more cautious with a defendant like Simpson and accordingly, should be held to a higher standard and the judgment of conviction should be reversed.

CONCLUSION

THE DEFENDANT-APPELLANT SIMPSON WAS NOT AFFORDED ADEQUATE REPRESENTATION. THE GOVERNMENT WAS UNFAIR IN THEIR DISCLOSURE. ACCORDINGLY THE JUDGMENT OF CONVICTION SHOULD BE REVERSED AND THE INDICTMENT DISMISSED.

Respectfully submitted,

JOSEPH I. STONE
Attorney for Defendant-appellant
277 Broadway
New York, New York 10007

APPENDIX

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18:1241 Mail fraud. 3,4,9, 10-12,14,17,18
 18:371 Consp. to defraud ins. companies. 21
 18:1962(c) Racketeering. 22
 18:1623 Perjury. 23

18:1341 Mail Fraud 3-4,9-12,14,17-18
 18:371 Co. p. to commit mail fraud 21
 18:1962(c) Eng. ng in racketeering activity 22
 18:1623 Perjury 23

KEY DATES & INTERVALS

ARREST or	INDICTMENT	ARRAIGNMENT	TRIAL	SENTENCE
U.S. Custody Began	Information ☐ 7-20-77	Indict. Waived ☐	Ver. Dire ☐	Disposition of Charges 10-13-77
Summons Served	Superceding Indictment ☐ 9-23-77	1st Plea 7-22-77	1st Trial 10-3-77	Convicted ☐ On All Charges
First Appearance	In Charging District	2nd Plea	1st Trial Ended 10-13-77	Acquitted ☐ On Lesser Offense(s)
		3rd Plea		Dismissed ☐ On Government's Motion

MAGISTRATE	IN. BALANCE	CORPORATE
DATE OF APPEARANCE DATE		
APPEARANCE DATE		
REMOVAL OR		
REMOVAL		
REMOVAL		
REMOVED		
REMOVED		
REMOVED		

Eugene Neal Kaplan
 791-0006

Alan Salzman
 325 B'way
 N.Y.C. 10007

Joseph E. Stone
 277 B'way
 N.Y.C. 10007 RE-2-217

McIver, et al.

7-20-77 Filed indictment.

7-23-77 Deft. (no atty. present) Court directs entry of not guilty. Ordered photographed and fingerprinted. Deft. to surrender passport by Fr. 7-29-77. R.O.R. Case assigned to Judge Weinfeld for all purposes. Weinfeld, J.

9-13-77 Also office & notice of Motion for the deft. to be present to file 9-13-77. The deft. is in custody on info. - Dismissing the perjury counts against the deft. Ret 9-20-77

9-20-77 Filed stip & order that the Motion of deft for certain pre-trial relief including dismissal of the above-indicated indictments to said deft, dated 9-2-77 be & the same hereby adj. from 9-20-77 until 9-27-77 at 2:15 PM. So ordered WEINFELD, J.

9-23-77 Filed Superseding Indictment.....Weinfeld, J.

9-27-77 Filed proposed examination of prospective jurors

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9-26-77 Filed Govt's affid in response to the motion of deft dated 9-7-77 to dismiss one or more counts of the indictment

9-28-77 Filed Govt's memorandum in opposition to the pre-trial motions of deft

9-30-77 Filed Govt's memorandum in opposition to the pre-trial motions of deft.

9-30-77 Filed deft's motion filed 9-12-77 - the basis of deft's motion to dismiss the indictment is as to the charges & venue, but a reading of the indictment of the AM & the Court Jury indicates no basis for dismissal. So the claim for dismissal under the pre-trial act is without substance. the current charge clearly is different from the prior charge, which was dismissed by the Mag. on the Govt's motion ... WEINFELD, J. N/H

10-11-77 Filed Writ of H/C A^D Tbet Writ satisfied. WEINFELD, J.

10-3-77 Trial begun as to deft before WEINFELD, J. with a jury

10-4-77 Trial continued before WEINFELD, J. with a jury

10-5-77 Trial continued Juror \$5 Miss Michele A. Minissale excused due to illness, Alt Juror #1 Mr. Rubin Oster is sworn

10-6-77 Trial continued

10-7-77 " " Govt rests & deft's go forward Govt consents to the withdrawal of count 22 Racketeering Ct. as to deft.

10-11-77 Trial continued & concluded 11:30 AM summations begin & are concluded

10-12-77 Trial as to deft continued - Court charges jury & they retire/begin deliberations at 1:05 PM Juror #1 Mrs. Ranagan is excused & alt. #1 Mrs. Imposition is sworn:

3:40 PM rec'd note from jury - Courts exhibit # 1

4:30 PM " " " " Court exhibit #2

5:50 PM " " " " " # 3

6:50 PM Jury sent to dinner

8:15 PM Jury returns from dinner & resumes deliberations

9:37 PM Received note from jury exhibit #4

11 PM jury sent home - case adj to Thurs. 10-13-77 at 9:15 AM in room 1506

10-13-77 Trial continued - jury resumes deliberations at 9:15 AM

11 AM rec'd note from jury - Marked Court's exhibit # 5

2:40 PM rec'd partial verdict from jury as to deft. DEft Simpson found GUILTY on Cts 3, 4, 9, 10, 11, 12, 14, 17, 18, 21, 23 PSI ordered

Sent adj to Thursday 11-10-77 at 10 AM in room 401 DEft continued ROR

11-2-77 Filed affid & notice of motion for an order setting aside the verdict of the jury - Directing the Probation Office or any other competent agency to administer intelligence tests to the deft etc. ret 11-10-77

11-18-77 Filed Govt's affid in opposition to the post trial motions of deft. dated 11-1-77

-continued on page 3-

A2

U.S. 15
 11-18-77

Page 3

S.V. ()

11-18-77
 11-23-77

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
11-18-77	(Document No.) Filed JUDGMENT & COMMITMENT (deft, Atty Joseph Stone present) The deft is hereby committed to the custody of the Atty General or his authorized representative for imprisonment for a period of ONE (1) YEAR on each of counts 3,4,9,10,11,12,14,17,18,21,23 to run concurrently with each other. Deft continued released on his own recognizance pending appeal, on condition that the appeal be filed forthwith and docketed within 10 days (11-23-77) and that 10 days thereafter (12-8-77) the appealnt file his points on appeal, and that 10 days thereafter (12-17-77) the Govt shall respond.....WEINFELD, J. (copies issued) (Superseding Ind.) Deft advised of his rights to appeal				
11-18-77	Filed notice of appeal from the Judgment of conviction entered on the 18th day of Nov. 1977 (copy mailed to Joseph I. Stone 277 Bway N.Y.C. 10007) (US Atty notified)				
11-21-77	Filed memo and on motion fld 11-2-77 The motion to set aside the verdict is DENIED, as is the other relief requested by deftSo ordered WEINFELD, J. N N (US Atty notified)				

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UNITED STATES DISTRICT COURT

Docket Number

(District Court Judge)

NOTICE OF APPEAL

Notice is hereby given that _____ appeals to the United States Court of Appeals for the Second Circuit from the ☐ Judgment ☐ order ☐ other (specify) _____ entered in this action on _____ (Date)

(Counsel for Appellant)

Date

To:

Address

Phone Number

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

QUESTIONNAIRE

TRANSCRIPT ORDER

DESCRIPTION OF PROCEEDINGS FOR WHICH TRANSCRIPT IS REQUIRED (INCLUDE DATE).

☐ I am ordering a transcript

☐ I am not ordering a transcript

Reason:

☐ Daily copy is available

☐ U.S. Attorney has placed order

☐ Other. Attach explanation

Prepare transcript of

☐ Pre-trial proceedings

☐ Trial

☐ Sentence

☐ Post-trial proceedings

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ☐ Method of payment ☐ Funds ☐ CJA Form 21

ATTORNEY'S signature

DATE

COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and forwarded to Court of Appeals.

Date order received

Estimated completion date

Estimated number of pages.

Date

Signature

(Court Reporter)

COPY FOR DEFENDANT

United States of America vs.

United States District Court for
SOUTHERN DISTRICT OF NEW YORK

DEFENDANT

CHARLES W. SIMPSON

DOCKET NO. S-77 Cr 532 (EW)

JUDGMENT AND PROBATION/GOVERNMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
NOVEMBER 18, 1977

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

JOSEPH STONE, ESQ.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☒ NOT GUILTY

There being a ~~guilty~~ verdict of

☐ NOT GUILTY. Defendant is discharged.
☒ GUILTY.

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly did use the mails in furtherance of a scheme and artifice to defraud. (T.18, United States Code, §§1341 & 2.). And conspiracy so to do. (T.18, United States Code, §371.). And unlawfully, wilfully, knowingly, and contrary to his oath did make false material declarations to the Grand Jury. (T.18, United States Code, §1623.)

as charged in counts 3-4-9-10-11-12-14-17-18-21-23

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty, as charged and convicted and ordered that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

ONE (1) YEAR, on each of counts 3-4-9-10-11-12-14-17-18-21-23 to run concurrently with each other.

SENTENCE
OR
PROBATION
ORDER

-AND-
Defendant continued Released on his own recognizance pending appeal, on condition that the appeal be filed forthwith and docketed within 10 days (11/28/77) and that 10 days thereafter (12/8/77) the appellant file his points on appeal, and that 10 days thereafter (12/17/77) the Government shall respond.

SPECIAL
CONDITIONS
OF
PROBATION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA

-against-

CHARLES WILLIAM SIMPSON
-----X

AFFIDAVIT

Ind. # 77 Cr 532

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

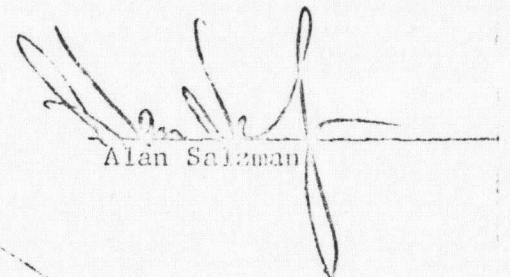
ALAN SALZMAN, being duly sworn deposes and says:

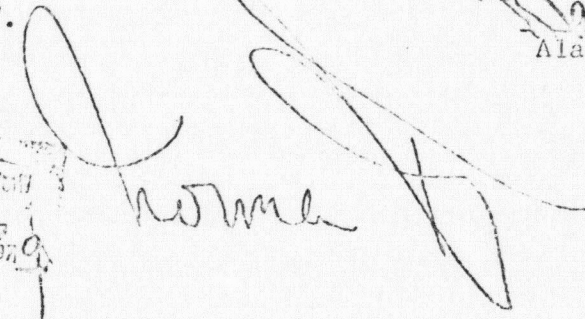
1. That I am an attorney in the State of New York admitted to practice in the United States District Court- Southern District.
2. That on or about June 13, 1977, the undersigned was appointed to represent Charles Simpson before a Grand Jury.
3. That prior to defendant's testimony before said Grand Jury I had opportunity to speak with my client Charles Simpson in reference to his appearance.
4. That the Defendant informed me that he had previously spoken to members or persons from the United States Attorney's office and that he told them what he knew and that he did not participate in any illegal activity and wished to testify before the Grand Jury.
5. At no time did Mr. Simpson inform me that a written statement was given to any member of the United States Attorney's office and or their employees, agents or servants and similarly I was never notified by Gene Kaplan, Esq., assistant United States attorney that he was in possession of any written statement given by the defendant.

6. That in fact Gene Kaplan, Esq., assistant United States attorney informed me that Mr. Simpson was not the target of the investigation as he was merely an employee.

7. That before Mr. Simpson testified before the Grand Jury I explained to Mr. Simpson all of his rights and then he informed me that he wished to proceed with his testimony.

Sworn to before me this 28th
day of October , 1977.


Alan Salzman


NORMAN INAKER
Notary Public, State of New York
No. 43 1921000
Qualified in Richmond County
Expires March 30, 1979

1 jplt

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2 MR. STONE: No, except had he not appeared before
3 the grand jury and had he asserted his Fifth Amendment
4 rights and had his statement made to the government been
5 known to him and repeated to the grand jury and had he
6 been consistent, I don't think the grand jury would have
7 indicted.

8 The statement that he made to the government
9 after his arrest was a consistent statement and was a
10 truthful statement. It was his statement to the grand jury
11 which differed from his post-arrest statement which formed
12 the basis of the perjury indictment.

13 THE COURT: Didn't he appear before the grand
14 jury twice?

15 MR. STONE: Yes, he took the Fifth Amendment
16 on June 13th.

17 THE COURT: Did he have a lawyer afterwards?

18 MR. STONE: He had a lawyer which he informed me
19 he only talked to him for a few minutes. That lawyer told
20 him to tell his story. That lawyer's affidavit indicates
21 that he didn't know, the lawyer didn't know --

22 THE COURT: How does that excuse the defendant
23 from not telling the truth before the grand jury?

24 MR. STONE: It doesn't excuse anybody from
25 not telling the truth. We are dealing here with a man of

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1 jplt

2 of a very limited education and there is obligation on both
3 the government and the defendant's attorney to be more
4 circumspect and explain everything in greater detail --

5 THE COURT: What do you think they should have
6 explained to him? What should the government have explained
7 to him after he had a lawyer?

8 MR. STONE: I think his lawyer should have known
9 what information was in the government's possession that
10 would have aided the defendant in refreshing his memory
11 and giving a clear and concise statement to the grand jury.

12 THE COURT: Did he indicate that his recollection
13 required refreshment?

14 MR. STONE: He did not, nor did anyone ask him
15 that.

16 THE COURT: Frankly, Mr. Stone, I am trying to
17 follow the basis of your argument. He appeared before a
18 grand jury, asserted his Fifth Amendment privilege, a lawyer
19 was assigned to represent him, he conferred with a lawyer,
20 and you say for a few minutes and I don't know if time is
21 a relevant factor here. At that point, do you think the
22 government should have turned over his files completely to
23 the defendant?

24 MR. STONE: Not his files.

25 THE COURT: What should they have told him?

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1 jplt

2 MR. STONE: They should have told him that his
3 previous statement was inconsistent with the statement in
4 the grand jury and they could have shown him it and asked
5 him if he wanted to retract or which statement he wanted to
6 stick with.

7 THE COURT: Where's your authority for that?

8 The man indicates he is prepared to testify and
9 gives an unequivocal answer and you say the government is
10 dutybound to tell him "You said so and so."

11 MR. STONE: I think under Rule 16 and under
12 Berger.

13 THE COURT: You mean when a man is called before
14 a grand jury as a witness he has a right to a Rule 16
15 discovery?

16 MR. STONE: I would think so. I think the
17 government has in both under Berger and Brady with a certain
18 amount of fundamental --

19 THE COURT: He wasn't a defendant there?

20 MR. STONE: He was a defendant in a complaint
21 that had subsequently been dismissed. I think that because
22 of this limited intelligence situation --

23 THE COURT: You repeatedly made that statement
24 and the jury heard and saw the witness. The jury is the
25 fact finders. You have repeated that so often and it is not

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1 jplt

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2 borne out either during the trial or from the jury
3 determination.

4 MR. STONE: The only other alternative I had
5 for relief was whether the Court in an unusual situation
6 order intelligence tests.

7 THE COURT: You keep on saying "unusual" and I
8 don't see anything unusual about it except your statement.

9 I observed this man on the witness stand. He
10 was able to answer questions. He certainly understood all
11 the questions. You are making it appear that he was just
12 utterly at sea and he didn't know what was going on. The
13 record doesn't bear that out one bit, Mr. Stone.

14 I respect your loyalty to your client but I
15 cannot disregard facts. You are an able advocate for your
16 client and I am not changing the law and the law does not
17 require any such thing as you indicated.

18 I will hear the government.

19 MR. KAPLAN: Your Honor, the government has
20 submitted an extensive affidavit with regard to Mr. Stone's
21 motion. Unless your Honor wants to hear from me further --

22 THE COURT: Of course I want to hear from you.
23 Don't sit there and assume you have a result simply because
24 I have asked questions.

25 MR. KAPLAN: Mr. Stone moved first --

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1 jplt

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2 THE COURT: He accuses you of not giving the
3 defendant information that he says you should have given
4 to him when he appeared before the grand jury for the second
5 time.

6 MR. KAPLAN: In the first place, Mr. Stone
7 relies on Rule 16 which is inapplicable since Mr. Simpson
8 was not indicted and not charged as a defendant.

9 In the second place, the case law in the circuit,
10 Camporeale and Deltoro and the Winter decision do not
11 require that such information be furnished to a grand jury
12 witness.

13 In the third place, in Mr. Saltzman's affidavit,
14 Mr. Saltzman, Mr. Simpson's prior attorney, indicated that
15 Mr. Simpson was aware of his conduct and wished to testify
16 before the grand jury, that it was a voluntary decision on
17 Mr. Simpson's part.

18 In addition, Mr. Stone says that his testimony,
19 his prior statements were consistent with his not having
20 committed perjury, well, in fact, that's not true. When he
21 spoke with the FBI back in January 1976 Mr. Simpson said that
22 he was totally unaware that the cars would be reported stolen
23 after they had been cut up at Mr. McIver's Newport Auto
24 Wrecking Yard.

25 As your Honor heard from Mr. Watson and other

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1 jplt

2 witnesses at the trial, Mr. Simpson is very aware that
3 occurred. Even his statement, which Mr. Stone relies upon
4 are perjurous, are false.

5 There is no basis for the motion. In
6 addition, since a number of the specifications of perjury
7 charged in the indictment in no way at all related to the
8 prior statements which Mr. Simpson had given, since Mr.
9 Simpson was convicted by the jury in a general verdict which
10 didn't specify which of the perjurous specifications the
11 jury must assume that they found all of them and since some
12 of them do not relate at all to his prior statements there
13 is no basis for relief.

14 The requests for intelligence tests, as your
15 Honor pointed out, and this man testified, the jury observed
16 him, your Honor has observed him, the probation officer has
17 had an opportunity to observe him and indicated that Mr.
18 Simpson indicates an adequate state of intelligence.

19 More importantly, his ability to understand and
20 comprehend is clearly a question made clear by the Corr
21 case of the Second Circuit and made clear in the Long deci-
22 sion in the Third Circuit.

23 THE COURT: What is the Corr decision?

24 MR. KAPLAN: In the Corr decision, the Court of
25

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1 jplt

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2 Appeals, I believe, that Mr. Corr did not understand certain
3 of the questions that were posed of him in the grand jury
4 and he was then charged with violating 1,001 rather than
5 perjury.

6 The Second Circuit in the Corr decision, at
7 page 1039 of 543 of the Federal Report, Federal 2nd, says
8 that the claim that Corr misunderstood the questions set
9 forth in Counts 6, 7 and 10 because they were imprecise
10 presents the issue of interpretation placed upon the
11 question by the defendant. This is an issue for the jury
12 which rejected Corr's contentions.

13 The same contention is made here and for the
14 same reason it should be rejected.

15 In addition to what I have said, we will rely
16 on our papers.

17 THE COURT: Anything further, Mr. Stone?

18 MR. STONE: Nothing, your Honor. I think you
19 are aware of all the facts in the case.

20 THE COURT: The motion made by the defendant to
21 set aside the jury verdict is denied as is the balance of
22 the requested relief.

23 MR. STONE: Defendant is ready for sentencing
24 your Honor.

25 THE COURT: I will hear you, Mr. Stone, first.

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